



## DEPARTMENT OF DEFENSE

[Docket ID DoD-2022-OS-0003]

### Privacy Act of 1974; System of Records

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice of a new system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, the DoD is adding a new system of records, titled “Office of Military Commissions (OMC) Victim and Witness Assistance Program Records,” DGC 22. The system will be used to maintain the necessary information for victims, victim family members (VFMs), and witnesses to travel to Guantanamo Bay, Cuba (GTMO).

The information will also be used to obtain clearance for victims and VFMs to travel to military installations for the purpose of viewing Closed Circuit Television of the GTMO trials.

**DATES:** This new system of records is effective upon publication; however, comments on the Routine Uses will be accepted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The Routine Uses are effective at the close of the comment period.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

\* Federal Rulemaking Portal: <https://www.regulations.gov>.

Follow the instructions for submitting comments.

\* Mail: DoD cannot receive written comments at this time due to the COVID-19 pandemic.

Comments should be sent electronically to the docket listed above.

*Instructions:* All submissions received must include the agency name and docket number for this *Federal Register* document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet

at <https://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Alva C. Foster, Office of Information Counsel, DoD General Counsel (Legal Counsel), 1600 Defense Pentagon, Room 3B688, Washington, DC 20301, [alva.c.foster.civ@mail.mil](mailto:alva.c.foster.civ@mail.mil) or by phone at (571) 286-0254.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Office of Military Commissions (OMC) Victim and Witness Assistance Program Records, DGC 22, system of records provides OMC the necessary means to process and track the clearances and travel of victims, VFMs and witnesses as required by the Regulation for Trial by Military Commission (2011 Edition). It is also the means established by the Deputy Secretary of Defense Memorandum dated October 17, 2008, which authorizes VFM travel to GTMO.

The DoD notices for systems of records subject to the Privacy Act of 1974, as amended, have been published in the *Federal Register* and are available from the address in FOR FURTHER INFORMATION CONTACT or at the Privacy, Civil Liberties, and FOIA Division (PCLFD) website at <https://dpcl.d.defense.gov/privacy>.

**II. Privacy Act**

Under the Privacy Act, a “system of records” is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as a U.S. citizen or lawful permanent resident.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A-108, the DoD has provided a report of this system of records to OMB and to Congress.

Dated: January 7, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register

Liaison Officer, Department of Defense.

**SYSTEM NAME AND NUMBER:** Office of Military Commissions (OMC) Victim and Witness Assistance Program Records, DGC 22.

**SECURITY CLASSIFICATION:** Unclassified

**SYSTEM LOCATION:** Office of Military Commissions, 1600 Defense Pentagon, Washington, DC 20301-1600.

**SYSTEM MANAGER(S):** Director, Victim and Witness Assistance Program, Office of the Chief Prosecutor, Office of Military Commissions, 1610 Defense Pentagon, Washington, DC 20301-1610.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:** 42 U.S.C. 10607, Victims' Rights and Restitution Act (VRRRA); 18 U.S.C. 3771, Crime Victims' Rights Act (CVRA); DoD Directive 1030.01, Victim and Witness Assistance; DoD Instruction 1030.2, Victim and Witness Assistance Procedures; and E.O. 9397 (SSN), as amended.

**PURPOSE(S) OF THE SYSTEM:**

A. Allow the Office of Military Commissions to communicate directly with the victims, victim family members (VFMs), and witnesses to obtain the credentials which enable them to attend portions of the trials in Guantanamo Bay, Cuba (GTMO). All of these individuals travel on military aircraft.

B. Facilitate obtaining victim impact information for use by the trial authorities.

C. Allow access to military installations by victims and VFMs for the purpose of viewing the GTMO proceedings while remaining in the United States, as authorized by the President of the United States.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

A. All individuals who have suffered direct harm or loss as the result of an offense as defined in the 10 U.S.C. Chapter 47A (the Military Commissions Act of 2009), and for which an individual subject to trial by a military commission has been charged. Individuals include, but are not limited to, victim families of the September 11, 2001 attack on the United States and the October 12, 2000 attack on the USS Cole.

B. Case in chief witnesses and sentencing witnesses, and prosecution and defense witnesses of any case referred to this military commission.

**CATEGORIES OF RECORDS IN THE SYSTEM:** Information collected includes full name, Social Security Number (SSN), alien registration number, immigration certification number and petition number, mailing address, home telephone number(s) and email address(s), citizenship, passport information, driver's license number, gender, race/ethnicity, date of birth, place of birth, weight, height, hair color, eye color, security clearance information, name of the deceased or injured, relationship to the victim, case name, requests to view closed circuit television broadcasts of hearings, travel-related information (emergency point of contact information, physician's information), military status and grade, whether or not the person has been convicted of a felony, and statements for the court from family members on how their loss affected them.

**RECORD SOURCE CATEGORIES:** The individuals: victims, family members, and witnesses.

#### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING**

**CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:** In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government when necessary to accomplish an agency function related to this system of records.

B. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

C. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent. Specifically, to the Department of Justice, Director for Victims of Overseas Terrorism for the purpose of facilitating victim assistance. Department of Justice victim specialists will be detailed as necessary to assist the Department of Defense, Office of Military Commissions Victim Witness Liaison to run the victim assistance program.

D. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

E. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

G. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with

the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

H. To another Federal agency or Federal entity, when the DoD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

I. To another Federal, State or local agency for the purpose of comparing to the agency's system of records or to non-Federal records, in coordination with an Office of Inspector General in conducting an audit, investigation, inspection, evaluation, or some other review as authorized by the Inspector General Act.

J. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

K. To the Victim Liaison for a U.S. Federal District Court for the purpose of facilitating communications about the proceedings, in the event a military commissions case is transferred to such court.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:** Paper records and electronic storage media.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:** Individual's name, email address, and name of the deceased or injured persons.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:** Disposition pending (Treat system records as permanent until the National Archives and Records Administration approves the proposed retention and disposal schedule).

**ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:** The records are maintained in a controlled facility. Access to the records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Physical entry is restricted by the use of combination and cipher locks, guards, and is accessible only to authorized personnel. Paper records are stored in locked file cabinets. Access to the Victim and Witness Assistance Program (VWAP) SharePoint site is restricted by Common Access Card (CAC) and PIN.

**RECORD ACCESS PROCEDURES:** Individuals seeking access to records about themselves contained in this system of records should address written inquiries to Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301-1155. Signed, written requests should include the individual's full name the name of the deceased or injured, and the name and number of this system of records notice. In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

**CONTESTING RECORD PROCEDURES:** The DoD rules for accessing records, contesting contents, and appealing initial Component determinations are contained in 32 CFR part 310, or may be obtained from the system manager.



**NOTIFICATION PROCEDURES:** Individuals seeking to determine whether information about themselves is contained in this system of records should follow the instructions for Record Access Procedures above.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:** None.

**HISTORY:** None.

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